

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

ORDER

03 CR 537 (RJD)

TIAFOLOUS SPENCER,

Defendant.

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DEARIE, Chief Judge.

Defendant Tiafolous Spencer, proceeding *pro se*, moves for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2). For the reasons stated herein the motion is denied.

Defendant pled guilty to one count of conspiracy to distribute and possess with intent to distribute fifty grams or more of cocaine base in violation of 21 U.S.C. § 846, 841(a)(1) and 841(b)(1)(A)(iii). According to the guidelines applicable at the time, defendant's imprisonment range was 210 to 262 months. Nevertheless, defendant was sentenced below the guidelines to the mandatory minimum term of imprisonment of 120-months with five-years of supervised release, pursuant to § 841(b)(1)(A)(iii).

Defendant contends that he is eligible for re-sentencing under the retroactive application of the United States Sentencing Commission's recent amendment to the crack cocaine sentencing guidelines, 72 Fed.Reg. 28571-72 (2007). However, because the defendant was sentenced to the *statutory* mandatory minimum term of incarceration, see 21 U.S.C. § 841(b)(1)(A)(iii), he does not qualify for relief under § 3582(c)(2). See U.S. v. Campbell, No. 03 CR 537, 2008 WL 1957773 (E.D.N.Y. May 5, 2008); Unites States v. Ortiz, No. 04 Cr. 268, 2008 WL 709488 (S.D.N.Y. March 17, 2008); U.S. v. Herndon, No. 3:95CR00066, 2008 WL 723780 (W.D.Va.

March 13, 2008); United States v. Howell, Criminal Action No. 2:06-00027-01, 2008 WL 687112 (S.D.W.Va. March 12, 2008); U.S. v. Draughon, No. 2:01-cr-94-2, 2008 WL 320775 (S.D.Ohio Feb. 4, 2008); United States v. Quarles, No. 98-40044-01, 2008 WL 161686 (D. Kansas Jan. 16, 2008).

SO ORDERED.

Dated: Brooklyn, New York
May 14, 2008

s/ Judge Raymond J. Dearie

RAYMOND J. DEARIE
United States District Judge